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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JOHN ARLEN STANLEY,

10 Petitioner,

Case No. C14-1689-JLR-MAT

11 v.

REPORT AND RECOMMENDATION

12 PATRICK GLEBE,

Respondent.

13
14 INTRODUCTION AND SUMMARY CONCLUSION

15 Petitioner John Stanley is a state prisoner who is currently confined at the Stafford Creek
16 Corrections Center in Aberdeen, Washington. He seeks relief under 28 U.S.C. § 2254 from a
17 2010 King County Superior Court judgment and sentence. Respondent has filed an answer
18 responding to petitioner's federal habeas claim and has submitted relevant portions of the state
19 court record. This Court, having carefully reviewed petitioner's claim, respondent's response
20 thereto, and the state court record, concludes that petitioner's petition for writ of habeas corpus
21 should be denied and this action should be dismissed with prejudice.

22 FACTUAL HISTORY

23 In the early morning hours of May 28, 2010, Abdiqahar Adan was dropped off a few

1 blocks from his home in the Central Area of Seattle after spending an evening with friends in
2 North Seattle. (Dkt. 12, Ex. 2 at 151-52.) As Mr. Adan walked home, he passed two men on the
3 sidewalk, one of whom he later identified as petitioner John Stanley. (*Id.*, Ex. 2 at 155-56.)
4 Immediately after Mr. Adan passed them, the two men caught up with Mr. Adan at which point
5 petitioner grabbed Mr. Adan from behind, placed him in a choke hold, and took him to the
6 ground. (*Id.*, Ex. 2 at 157-58.) Petitioner put an unknown object to Mr. Adan's head and
7 threatened to shoot him in the face. (*Id.*, Ex. 2 at 158, 173.) As Mr. Adan struggled, the men
8 punched him repeatedly. (*See id.*, Ex. 2 at 158-59, 176-77.)

9 Mr. Adan told the men they could take everything he had, but Mr. Adan had only \$20 in
10 his pocket. (*Id.*, Ex. 2 at 158.) When Mr. Adan took the money out to give to them, the second
11 man told Mr. Adan they wanted "everything" from him. (*Id.*, Ex. 2 at 158.) The second man
12 searched Mr. Adan's pockets while petitioner held him down and he took Mr. Adan's debit card,
13 cell phone, student ID, and the \$20. (*See id.*, Ex. 2 at 160, 163-64, 177-78.) Mr. Adan refused
14 demands to give the men the PIN number for his debit card. (*Id.*, Ex. 2 at 161.) He also refused
15 demands to take off his jacket, and Mr. Adan ultimately demanded that the two men return
16 everything they had taken from him. (*See id.*, Ex. 2 at 160-61.) The two men then fled. (*Id.*, Ex.
17 2 at 161-62.)

18 As petitioner and the other man walked away, Mr. Adan heard a phone ringing, saw a cell
19 phone on the ground, and picked it up. (*Id.*, Ex. 2 at 162-3.) Mr. Adan taunted the robbers,
20 yelling "I have your cell phone." (*Id.*, Ex. 2 at 165.) Mr. Adan began walking to a nearby
21 AM/PM market when he saw petitioner running towards him. (*Id.*, Ex. 2 at 162-64.) Mr. Adan
22 ran straight to the clerk at the AM/PM, told the clerk he had been assaulted and needed help, and
23 asked the clerk to call 911, which the clerk did. (Dkt. 12, Ex. 2 at 164.) Petitioner entered the

1 store as well and offered Mr. Adan money to return the cell phone he had picked up, but Mr.
2 Adan refused. (*Id.*, Ex. 2 at 167-68.) The police arrived while both Mr. Adan and petitioner
3 were still in the store, and petitioner was arrested. (*Id.*, Ex. 1 at 48-50, 77.) Officers conducted a
4 search of petitioner incident to his arrest and discovered that he was in possession of crack
5 cocaine. (*See id.*, Ex. 1 at 51-52, 63-64, 78-79, 86.)

6 On August 10, 2010, while petitioner was in pretrial custody at the King County Jail,
7 Corrections Officer Chang An saw petitioner, who was in his cell, hand a note to another inmate,
8 Anthony Terry, who was standing in the dayroom of petitioner's housing unit. (*Id.*, Ex. 2 at 99-
9 102.) Shortly thereafter, inmate Terry handed the note to another inmate who was about to be
10 released from custody, inmate Earl Barrington. (*Id.*, Ex. 2 at 103-04.) Corrections Officer An
11 retrieved the note from inmate Barrington. (*Id.*, Ex. 2 at 106.) The note indicated that it was
12 from "Doelow," which is one of petitioner's nicknames. (*See id.*, Ex. 1 at 109-13, Ex. 2 at 122-
13 26, and Ex. 33.) The note contained a telephone number next to the name "Abdi," and it
14 indicated that Abdi should be contacted and offered payment to not participate in the trial." (*Id.*,
15 Ex. 33.) Mr. Adan confirmed at trial that his nickname is "Abdi" and that the telephone number
16 listed on the note was his home phone number. (*Id.*, Ex. 2 at 149, 181.)

17 On September 3, 2010, following a jury trial, petitioner was convicted on charges of first
18 degree robbery, possession of cocaine, and attempted bribery of a witness. (*Id.*, Ex. 4.)
19 Petitioner was sentenced on November 5, 2010 to a total term of 144 months confinement. (*Id.*)

20 PROCEDURAL HISTORY

21 Petitioner appealed his convictions and sentence to the Washington Court of Appeals.
22 (*See* Dkt. 12, Exs. 5 and 10.) In the opening brief prepared by petitioner's appellate counsel,
23 petitioner asserted that (1) the judgment had misstated his offender score and standard ranges,

1 and (2) the sentencing court miscalculated petitioner's offender score and standard range on his
2 conviction for attempted bribery. (*Id.*, Ex. 5 at 1.) The state conceded these errors. (*Id.*, Ex. 6.)

3 Petitioner also filed a pro se statement of additional grounds for review in which he
4 asserted that (1) a police officer's testimony was inconsistent with an earlier report regarding her
5 contact with petitioner, (2) John Collins was not called as a defense witness, (3) inmates
6 Anthony Terry and Earl Barrington were subpoenaed to come to court but never appeared thus
7 violating petitioner's right to confront his accusers, and (4) the victim testified only that he
8 "believe[d]" petitioner was the perpetrator and he also failed to tell the court that he gave two
9 different descriptions of the alleged perpetrator. (*Id.*, Ex. 10 at 1-2.)

10 On January 30, 2012, the Court of Appeals issued an unpublished opinion in which it
11 accepted the state's concession of error regarding the sentencing issues, rejected petitioner's pro
12 se grounds for review, and remanded for resentencing. (*Id.*, Ex. 11.) Petitioner did not seek
13 further review by the Washington Supreme Court, and the Court of Appeals issued its mandate
14 terminating direct review on March 9, 2012. (*Id.*, Ex. 12.)

15 On November 6, 2012, petitioner filed a personal restraint petition in the Washington
16 Court of Appeals in which he asserted that his trial counsel's performance was deficient in
17 various respects. (*Id.*, Ex. 13.) The Court of Appeals construed petitioner's petition as alleging
18 the following deficiencies in counsel's conduct: (1) counsel failed to call witnesses; (2) counsel
19 failed to call Anthony Terry despite the fact that the court had issued a subpoena; (3) counsel
20 failed to obtain a handwriting expert as petitioner had requested; (4) counsel failed to hire an
21 investigator; (5) counsel failed to interview the store clerk to determine whether other people
22 were in the store at the time of the crime; (6) counsel failed to discover relevant case law; (7)
23 counsel failed to sufficiently cross-exam the victim regarding differences between his original

1 physical description of the assailant and petitioner's physical appearance; and, (8) counsel failed
2 to fully investigate the case. (Dkt. 12, Ex. 14.) On April 22, 2013, the Acting Chief Judge of the
3 Court of Appeals issued an order dismissing petitioner's personal restraint petition. (*Id.*, Dkt.
4 14.)

5 Petitioner sought further review of his ineffective assistance of counsel claim by the
6 Washington Supreme Court. (*Id.*, Ex. 17.) Petitioner identified the following instances of
7 deficient performance in his motion for discretionary review: (1) counsel failed to call Anthony
8 Terry as a witness; (2) counsel failed to obtain the services of an investigator and handwriting
9 expert; (3) counsel failed to investigate/interview the store clerk who called 911 and other
10 potential witnesses who were in the store at the same time petitioner and Mr. Adan were there;
11 (4) counsel failed to discover relevant case law; (5) counsel failed to adequately cross-examine
12 Mr. Adan regarding discrepancies between his original description of the robber to the police and
13 petitioner's actual appearance. (*Id.*, Ex. 17 at 13-15.)

14 On January 3, 2014, the Acting Commissioner of the Supreme Court issued a ruling
15 denying review. (*Id.*, Ex. 23.) A subsequent motion to modify the Commissioner's ruling was
16 likewise denied. (*Id.*, Exs. 28 and 31.) The Washington Court of Appeals issued a certificate of
17 finality in petitioner's personal restraint proceedings on August 27, 2014. Petitioner now seeks
18 federal habeas review of his convictions.

19 GROUND FOR RELIEF

20 Petitioner identifies a single ground for relief in his federal habeas petition in which he
21 asserts that he was denied his Sixth Amendment right to effective assistance of counsel. (Dkt. 4
22 at 5.) Though petitioner does not identify specific instances of ineffective assistance in his
23 petition, his intention appears to be to assert the same ineffective assistance claims in these

1 proceedings as were presented in his state court proceedings. (*See id.*) Accordingly, this Court
2 construes petitioner's federal habeas petition as asserting the same deficiencies in counsel's
3 performance as were asserted in petitioner's motion for discretionary review to the Washington
4 Supreme Court in his motion for discretionary review. (*See* Dkt. 12, Ex. 17 at 12-15.)

5 DISCUSSION

6 Respondent concedes in his answer that petitioner has properly exhausted his ineffective
7 assistance of counsel claim. Respondent argues, however, that petitioner is not entitled to relief
8 in these proceedings because the state courts adjudicated the claim on the merits and properly
9 rejected petitioner's challenge to trial counsel's effectiveness.

10 Standard of Review

11 Under the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), a habeas corpus
12 petition may be granted with respect to any claim adjudicated on the merits in state court only if
13 the state court's decision was contrary to, or involved an unreasonable application of, clearly
14 established federal law, as determined by the Supreme Court, or if the decision was based on an
15 unreasonable determination of the facts in light of the evidence presented. 28 U.S.C. § 2254(d).

16 Under the "contrary to" clause, a federal habeas court may grant the writ only if the state
17 court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law,
18 or if the state court decides a case differently than the Supreme Court has on a set of materially
19 indistinguishable facts. *See Williams v. Taylor*, 529 U.S. 362, 405-06 (2000). Under the
20 "unreasonable application" clause, a federal habeas court may grant the writ only if the state
21 court identifies the correct governing legal principle from the Supreme Court's decisions, but
22 unreasonably applies that principle to the facts of the prisoner's case. *See Williams*, 529 U.S. at
23 407-09. "The 'unreasonable application' clause requires the state court decision to be more than

1 incorrect or erroneous.” *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003) (citations omitted). A state
2 court’s decision may be overturned only if the application is “objectively unreasonable.” *Id.*

3 Clearly established federal law, for purposes of AEDPA, means “the governing legal
4 principle or principles set forth by the Supreme Court at the time the state court render[ed] its
5 decision.” *Id.* at 71-72. “If no Supreme Court precedent creates clearly established federal law
6 relating to the legal issue the habeas petitioner raised in state court, the state court’s decision
7 cannot be contrary to or an unreasonable application of clearly established federal law.” *Brewer*
8 *v. Hall*, 378 F.3d 952, 955 (9th Cir. 2004) (citing *Dows v. Wood*, 211 F.3d 480, 485-86 (9th Cir.
9 2000)).

10 In considering a habeas petition, this Court’s review “is limited to the record that was
11 before the state court that adjudicated the claim on the merits.” *Cullen*, 131 S. Ct. at 1398-1400,
12 1415. If a habeas petitioner challenges the determination of a factual issue by a state court, such
13 determination shall be presumed correct, and the applicant has the burden of rebutting the
14 presumption of correctness by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

15 Ineffective Assistance of Counsel

16 The Sixth Amendment guarantees a criminal defendant the right to effective assistance of
17 counsel. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Claims of ineffective assistance
18 of counsel are evaluated under the two-prong test set forth in *Strickland*. Under *Strickland*, a
19 defendant must prove (1) that counsel's performance was deficient and, (2) that the deficient
20 performance prejudiced the defense. *Strickland*, 466 U.S. at 687.

21 With respect to the first prong of the *Strickland* test, a petitioner must show that counsel’s
22 performance fell below an objective standard of reasonableness. *Id.* at 688. Judicial scrutiny of
23 counsel’s performance must be highly deferential. *Id.* at 689. “A fair assessment of attorney

1 performance requires that every effort be made to eliminate the distorting effects of hindsight, to
2 reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from
3 counsel's perspective at the time." *Id.* In order to prevail on an ineffective assistance of counsel
4 claim, a petitioner must overcome the presumption that counsel's challenged actions might be
5 considered sound trial strategy. *Id.*

6 The second prong of the *Strickland* test requires a showing of actual prejudice related to
7 counsel's performance. In order to establish prejudice, a petitioner "must show that there is a
8 reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding
9 would have been different. A reasonable probability is a probability sufficient to undermine
10 confidence in the outcome." *Id.* at 694. The reviewing court need not address both components
11 of the inquiry if an insufficient showing is made on one component. *Id.* at 697.

12 While the Supreme Court established in *Strickland* the legal principles that govern claims
13 of ineffective assistance of counsel, it is not the role of the federal habeas court to evaluate
14 whether defense counsel's performance fell below the *Strickland* standard. *Harrington v.*
15 *Richter*, 131 S. Ct. 770, 785 (2011). Rather, when considering an ineffective assistance of
16 counsel claim on federal habeas review, "[t]he pivotal question is whether the state court's
17 application of the *Strickland* standard was unreasonable." *Id.* As the Supreme Court explained
18 in *Harrington*, "[a] state court must be granted a deference and latitude that are not in operation
19 when the case involves review under the *Strickland* standard itself." *Harrington*, 131 S. Ct. at
20 785.

21 Petitioner asserts that his trial counsel's performance was deficient in the following
22 respects: (1) he failed to call Anthony Terry as a witness; (2) he failed to obtain the services of
23 an investigator and handwriting expert; (3) he failed to investigate/interview the store clerk who

1 called 911 and other potential witnesses who were in the store at the same time petitioner and
2 Mr. Adan were there; (4) he failed to discover relevant case law; (5) he failed to adequately
3 cross-examine Mr. Adan regarding discrepancies between his original description of the robber
4 to the police and petitioner's actual appearance. (*See* Dkt. 12, Ex. 17 at 12-15.)

5 The Washington Court of Appeals rejected petitioner's challenges to his counsel's
6 performance because petitioner failed to submit any meaningful evidence to support his
7 assertions and he failed to articulate or establish any actual prejudice resulting from counsel's
8 alleged deficiencies. (*Id.*, Ex. 14.)

9 The Washington Supreme Court also rejected petitioner's ineffective assistance of
10 counsel claims, explaining its conclusion as follows:

11 Mr. Stanley argues that his trial attorney was ineffective. In order to
12 prevail on this claim, Mr. Stanley must show that his counsel's performance fell
13 below an objective standard of reasonableness and that, but for counsel's errors,
14 there is a reasonable probability that the outcome of the proceedings would have
15 been different. *In re Det. of Stout*, 159 Wn.2d 357, 377, 150 P.3d 86 (2007). Mr.
16 Stanley first contends that defense counsel was ineffective for failing to call
17 Anthony Terry to testify. But Mr. Stanley does not provide a declaration from
18 Mr. Terry or any other evidence showing that he would have provided favorable
19 testimony. *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086
20 (1992) (personal restraint petitioner's allegations based on matters outside of
21 record must be supported by competent, admissible evidence). He therefore fails
22 to show that his attorney's failure to secure Mr. Terry's testimony probably would
23 have affected the outcome. Mr. Stanley also argues that his attorney should have
hired a handwriting expert to rebut evidence that Mr. Stanley had written a note
attempting to bribe a witness, and that counsel should have hired an investigator
to pursue other potential witnesses. But, again, Mr. Stanley provides no evidence
that a handwriting expert would have testified that someone else wrote the note or
that further investigation would have been fruitful. Since Mr. Stanley fails to
show either unprofessional error or prejudice, his ineffective assistance claims
fail.

22 (Dkt. 12, Ex. 23.)

23 Petitioner fails to demonstrate that the state courts' decisions with respect to his

1 ineffective assistance of counsel claims are contrary to, or constitute an unreasonable application
2 of, clearly established federal law. With respect to potential defense witness Anthony Terry,
3 petitioner fails to even suggest what testimony Mr. Terry would have provided, much less
4 demonstrate that such testimony would have altered the outcome of the trial. The state courts
5 reasonably rejected this portion of petitioner's ineffective assistance of counsel claim.

6 With respect to the handwriting expert whom petitioner asserts should have been retained
7 by counsel in order to demonstrate that petitioner did not write the note which served as the basis
8 of the bribery charge, petitioner presents no evidence that the note was, in fact, written by
9 someone else. Moreover, as the trial court noted in its pretrial discussion with counsel regarding
10 the bribery charge, "[i]t may or may not be in his handwriting, but whether or not it's in his
11 handwriting is not dispositive, if he is the source. If he is in a cell with a second person, and it
12 came out of his cell, whether or not he wrote it, is not dispositive of whether he was behind it."
13 (Dkt. 12, Ex. 1 at 14.) Nothing in the record suggests that petitioner was in any way prejudiced
14 by counsels' failure to retain the services of a handwriting expert and, thus, the state courts
15 reasonably rejected this claim.

16 With respect to petitioner's claim that trial counsel failed to investigate and/or interview
17 the store clerk who called 911 and other individuals who may have been in the AM/PM market
18 at the same time as petitioner and Mr. Adan, petitioner again fails to even suggest what he
19 believes a more thorough investigation of these individuals would have revealed. The crime
20 itself did not occur in the AM/PM and the clerk's only apparent involvement in the incident was
21 that to call 911 at Mr. Adan's request. The only other thing that apparently transpired while
22 petitioner and Mr. Adan were in the AM/PM that the clerk or customers may have observed was
23 that petitioner offered Mr. Adan money for the return of his cell phone which Mr. Adan had

1 found at the scene of the assault. Nothing in the record suggests that any testimony from the
2 clerk, or others in the AM/PM on the night in question, would have been favorable to petitioner
3 or, in any event, would have altered the outcome of the trial. Thus, the state courts reasonably
4 rejected this portion of petitioner's ineffective assistance claim as well.

5 With respect to petitioner's claim that his trial counsel failed to discover relevant case
6 law, a review of petitioner's motion for discretionary review suggests that this claim pertains to
7 an exchange between petitioner's counsel and the trial court as petitioner's counsel argued for
8 severance of the bribery charge from the underlying robbery charge. (*See* Dkt. 12, Ex. 17 at 13-
9 14 and Ex. 1 at 5-12.) During this exchange, petitioner's counsel essentially conceded that he
10 had found no case law to support his position. (*See id.*, Ex. 1 at 11-12.) In order to prevail on
11 his claim that counsel failed to discover relevant case law petitioner would have to, at the very
12 least, identify the relevant case law that he believes counsel should have found. Petitioner made
13 no effort to do so in the state courts and he makes no such effort here. The state courts
14 reasonably rejected this portion of petitioner's ineffective assistance of counsel claim.

15 Finally, with respect to petitioner's claim that counsel failed to adequately cross-examine
16 Mr. Adan regarding discrepancies between the physical description of the perpetrator which Mr.
17 Adan gave police and petitioner's actual physical appearance, the record makes clear that Mr.
18 Adan never gave the police a description of petitioner. Petitioner provided police with a physical
19 description of the second suspect who was at large, but it was unnecessary for him to provide
20 police with a description of petitioner because and Mr. Adan were both in the store together at
21 the time the police arrived. (*See* Dkt. 12, Ex. 1 at 147-48.) As Mr. Adan never provided a
22 description of petitioner to police, there would have been no reason for counsel to cross-examine
23 Mr. Adan on this point. The state courts therefore reasonably rejected this final portion of

petitioner's ineffective assistance of counsel claim.

As the record before this Court makes clear that the state courts reasonably rejected the entirety of petitioner's ineffective assistance of counsel claim, petitioner's federal habeas petition should be denied.

Certificate of Appealability

A petitioner seeking post-conviction relief under § 2254 may appeal a district court's dismissal of his federal habeas petition only after obtaining a certificate of appealability (COA) from a district or circuit judge. A certificate of appealability may issue only where a petitioner has made "a substantial showing of the denial of a constitutional right." See 28 U.S.C. § 2253(c)(3). A petitioner satisfies this standard "by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Under this standard, this Court concludes that petitioner is not entitled to a certificate of appealability in this matter.

CONCLUSION

For the reasons set forth above, this Court recommends that petitioner's federal habeas petition be denied and that this action be dismissed with prejudice. This Court further recommends that a certificate of appealability be denied. A proposed order accompanies this Report and Recommendation.

DEADLINE FOR OBJECTIONS

Objections to this Report and Recommendation, if any, should be filed with the Clerk and served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report and Recommendation is signed. Failure to file objections within the specified time may affect

1 your right to appeal. Objections should be noted for consideration on the District Judge's
2 motions calendar for the third Friday after they are filed. Responses to objections may be filed
3 within **fourteen (14) days** after service of objections. If no timely objections are filed, the
4 matter will be ready for consideration by the District Judge on **February 13, 2015**.

5 DATED this 22nd day of January, 2015.

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8 Mary Alice Theiler
9 Chief United States Magistrate Judge
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